

THIRD PARTY PREPARER
CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT
FOR STATE PRODUCTION INCENTIVE APPLICATIONS

Confidentiality and Non-Disclosure Agreement for State Production Incentive Applications (“Agreement”) made and entered into by and between the undersigned Marketer’s independent, state production incentive application preparer, _____ (“Third Party Preparer”) and the undersigned commercial Production Company (each referred to as a “Party” and collectively as “Parties”) effective the ___ day of _____ 20__.

In consideration of the promises contained in this Agreement the Parties agree as follows:

1. **General.**

a. This Agreement is entered into by the Third Party Preparer in consideration of the Production Company providing Producer Information (as defined in Paragraph 3) which it is not otherwise obligated to provide, or provide in the particular format requested, to the Marketer’s designated Third Party Preparer for the limited purpose of preparing and filing the Marketer’s application for state production incentives based on the commercial production(s) produced by the Production Company for the Marketer identified on the signature page below (“Commercials”); and for other good and valuable consideration the receipt, adequacy and sufficiency of which is acknowledged by the Third Party Preparer. This Agreement is entered into by the Production Company in consideration of the Third Party Preparer’s promises contained herein, the undersigned Marketer’s guaranty of such promises and the fee and other compensation based on the state production incentive paid by the Marketer to the Production Company for its services in connection with the production incentive application for the Commercial(s).

b. This Agreement supplements and does not replace or cancel any other confidentiality or non-disclosure agreement or covenant between the Parties with respect to the subject matter of this Agreement including applicable provisions in the production agreement for the Commercial(s). This Agreement does not create any obligation in the Production Company to provide Producer Information (as defined in Paragraph 3) and any such obligation shall be determined under the terms of the production agreement for the Commercial(s) or as otherwise agreed in writing with the Marketer.

2. **Production Incentive Application Process.**

a. The Production Company does not, has not, and will not offer any opinion or assurance as to whether the Marketer or any element of production expenses qualifies for a state production incentive for the Commercial(s).

b. The Marketer warrants that it has engaged the Third Party Preparer to prepare and file its application and that the Third Party Preparer has no other interest, involvement, function or activity in the production of the Commercial(s) unless specifically agreed between the Marketer and the Production Company in the production agreement covering the Commercial(s). The costs, fees and expenses associated with the preparation, filing and processing of the application shall, as between the Production Company and Third Party Preparer and Marketer, be borne exclusively by the Third Party Preparer or Marketer. Marketer shall be responsible for all acts, omissions and breaches of this Agreement by the Third Party Preparer. Marketer and the Third Party Preparer warrant that all information contained in the state incentive application shall be truthful and accurate and shall comply with applicable state law and regulations and this Agreement.

c. The Third Party Preparer shall not, by act or omission, in the incentive application, or in the processes relating thereto represent, describe or identify itself (i) as the “production company” as that term is used

in the production agreement covering the Commercial(s); (ii) as the party who controlled and executed the physical production of the Commercial(s) under the production agreement; or (iii) as a party who performed any of the functions of the parties to the production agreement. Nothing contained in this Agreement or the state incentive application shall alter the relationship between the Production Company and the Marketer and its advertising agency as defined in the production agreement covering the Commercial(s).

3. **“Producer Information.”**

a. As part of the application preparation and filing process, and solely for purposes of reporting qualifying production components and expenditures in the application, as those terms are used under applicable state production incentive laws and regulations, the Marketer has requested that the Production Company provide Marketer’s Third Party Preparer with information which is unique, confidential and proprietary to the Production Company, relating to the business of the Production Company and the production of the Commercial(s) (each item and all such information is referred to as “Producer Information”).

b. Producer Information includes but is not limited to valuable trade secrets and know-how owned by the Production Company and may include information covered by laws which protect employee personal, wage and social security account information and other individual rights and interests.

c. Producer Information may take any form and may be transmitted by any media including but not limited to written, electronic or oral communications. When incorporated in the application, Producer Information shall remain confidential and proprietary to the Production Company and subject to the obligations, protections and restrictions in this Agreement.

4. **Exclusions from Producer Information.** Producer Information does not include information that is publicly available, has been developed by the Marketer or Third Party Preparer independently or was provided to the Production Company by the Marketer for the production of the Commercial(s).

5. **Third Party Preparer Information.**

a. Any confidential and proprietary information created by the Third Party Preparer as embodied in work papers for the incentive application and correspondence with the state incentive agency, identified as confidential which the Third Party Preparer elects to supply to the Production Company (each item and all such information is referred to as “Third Party Preparer Information”), shall be treated as confidential by the Production Company. Third Party Preparer Information does not include information that is publicly available, has been developed by the Production Company independently or was provided by the Production Company to the Third Party Preparer.

b. Third Party Preparer Information shall not be disclosed by the Production Company without the Third Party Preparer’s written approval except that the Production Company may disclose Third Party Preparer Information (i) to its professional advisors (including without limitation attorneys, accountants and other professionals) who are bound to maintain confidentiality and only in connection with the state incentive applications, or petitions, or enforcement of this Agreement; and (ii) to its agents and employees where necessary or appropriate in connection with the state incentive applications, or petitions. The Production Company may also disclose Third Party Preparer Information if required to do so as a result of a court order, valid subpoena and/or the requirements of any governmental agency, provided that the Production Company shall provide the Third Party Preparer with sufficient reasonable notice to enable it to object to the disclosure and seek limitations on the disclosure. Third Party Preparer Information which becomes publicly available through no fault of the Production Company shall not be deemed confidential or proprietary.

6. **Non-Disclosure, Restricted Use and Protection of Producer Information and Third Party Preparer Information.**

a. The Third Party Preparer agrees that Producer Information shall be maintained, protected and secured in strictest confidence and shall be used only for and only to the extent any item of Producer Information is required under applicable state law in the preparation, filing and processing of the application with the appropriate state production incentive agencies. Producer Information shall not be distorted or altered in the application preparation process and shall not be disclosed, directly or indirectly, to anyone without the Production Company's prior written authorization except: (i) to the state incentive agency when included in the application; (ii) within the Marketer's organization (and within its Third Party Preparer's organization, as applicable), Producer Information may be shared with employees and with independent professional legal or tax advisors who have an essential need to know Producer Information in order to prepare, file and process the application but subject to the restriction in clause (iv) hereof; (iii) when it must be produced pursuant to court order or valid subpoena, after sufficient reasonable notice and opportunity to object has been given to the Production Company; or (iv) when it is necessary for the Third Party Preparer to discuss with Marketer the tax incentive application or the incentive achieved; provided, however, in such event, Producer Information shall be discussed with Marketer only in terms of the gross expense category line item without disclosing to the Marketer any of the Production Company's specific margin, cost or expense details within any category line item or of any component of any category line item.

b. The Third Party Preparer shall: (i) maintain reasonable document, confidential information, and trade secret protection measures sufficient to safeguard Producer Information; (ii) obtain confidentiality undertakings substantially similar to those contained in this Agreement from its employees and independent professional legal or tax advisors who may have access to Producer Information; (iii) adopt and enforce confidentiality and non-disclosure business policies; and (iv) return all Producer Information it has received in all forms and copies in which it may be held by the Third Party Preparer promptly upon filing the application with the state production incentive agency or otherwise upon the written request of the Production Company, provided, however, that the Third Party Preparer may retain gross expense category line item information exclusively for tax or state or incentive agency audit purposes, but subject to Paragraph 6.

c. The Third Party Preparer shall not: (i) use Producer Information in any form, including but not limited to reports or analyses containing redacted or aggregated Producer Information, for the benefit of any client of the Third Party Preparer other than the Marketer; (ii) disclose Producer Information directly or indirectly to the Marketer except such Producer Information that the Production Company was obligated to disclose to the Marketer under the production agreement covering the Commercial(s) but subject at all time to the confidentiality provisions of the production agreement for the Commercial(s) and the restrictions contained in Paragraph 6 (a) (iv) ; or (iii) assign or subcontract the application preparation to any other preparer. A copy of the Third Party Preparer's execution of this Agreement and execution of the Marketer's guaranty is an essential condition to providing Producer Information to the Third Party Preparer.

d. The Third Party Preparer shall: (i) use best efforts to encrypt all employee personal, wage and social security account information in the filed application; (ii) apply all confidentiality procedures available under state production incentive application rules in order to protect Producer Information contained in the application; and (iii) request that the agency with whom the application is filed maintain the utmost confidentiality permitted under its rules.

e. In further consideration of the disclosure of Producer Information to the Third Party Preparer, the Third Party Preparer represents that it has or shall obtain and will maintain at its own cost and expense, errors and omissions or other liability insurance, for the benefit of the Production Company as an additional named insured on a primary noncontributory basis, against third party claims arising out of or relating to the disclosure to or by the Third Party Preparer of employee personal, wage or social security account information. The required insurance shall be

in effect for the longest governing statute of limitations and may be included in the Marketer's production wrap up insurance policies that covers the Commercial(s).

7. **Indemnification of Production Company.** The Third Party Preparer shall indemnify, defend, save and hold harmless the Production Company (and its affiliates, and the officers, directors, representatives and employees of all such entities) from and against any and all liabilities, damages, claims, judgments, actions, suits, fines, penalties, charges, taxes, violations, complaints, costs, expenses (including reasonable attorneys' fees) which may be asserted against, commenced, threatened or which may be incurred by the Production Company, that arise out of or are related to: (i) any breach by the Third Party Preparer of any representation, obligation, covenant or promise in this Agreement; (ii) the intentional or negligent acts or omissions of the Third Party Preparer and its employees, agents and contractors; and (iii) the disclosure to or by the Third Party Preparer of protected personal information including but not limited to employee personal, wage and social security account information.

8. **Governing Law.** The governing law provision in the production agreement for the Commercial(s) shall apply to this Agreement.

9. **Relief.** The Parties recognize that serious and irreparable injury could result to the Production Company or the Third Party Preparer, as the case may be, and their respective businesses if either Party breaches its obligations toward the other Party under this Agreement. Therefore, in that event, the Parties agree that the non-breaching Party shall be entitled to a restraining order, injunction or other equitable relief in addition to other remedies and damages that would be available at law or equity. However, in no event shall the Third Party Preparer be entitled to obtain, or to seek, a restraining order, injunction, or other equitable relief that would prevent, restrain, or interfere with the production, distribution, sale, license, assignment, exhibition, or other exploitation of the Commercial(s).

10. **Term of Agreement.** This Agreement will continue in full force and effect (i) in the case of information which constitutes a trade secret under applicable law, for as long it remains as a trade secret, (ii) in the case of other information (other than employee personal, wage, or social security account information) for a term of five (5) years and (iii) in the case of employee personal, wage, or social security account information for the longer of five (5) years or as long as it is protected by applicable law.

WHEREFORE, the Third Party Preparer and the Production Company have executed this Agreement by their authorized representatives as of the date first written above.

Third Party Preparer
(For itself and on behalf of all trades or businesses with whom it forms a "controlled group" within the meaning of the Internal Revenue Code)

Production Company

Address _____

Address _____

By: _____

By: _____

Commercial(s):

Name of Marketer: _____

Name or Title of Commercial(s): _____

Product/Service: _____

Advertising Agency: _____

Job Purchase Order Number: _____

Production Dates: _____

Marketer hereby:

1. Designates the Third Party Preparer as its authorized agent responsible for preparing and filing state production incentive applications and in the incentive process as described in this Agreement.
2. Guarantees the full performance of the promises, covenants, and obligations of the Third Party Preparer contained in this Agreement.
3. Assumes for itself, and agrees to be bound by, the warranties and representations and the nondisclosure, confidentiality and indemnification provisions, and all other obligations, promises and covenants of the Third Party Preparer, contained in this Agreement including, but without limitation, those with respect to Producer Information (as defined herein) which is provided to Marketer or to its Third Party Preparer.

The ANA Principles for Fair Business Practices for State Commercial Production Incentives (April 2014) provides:

“In cases where the marketer is handling the filing [of the state production incentive application] and engages a third party to facilitate that, the marketer assumes responsibility for the actions and conduct of the third party and, as such, should provide the production company with an indemnification/confidentiality agreement (also referred to as a nondisclosure agreement/NDA).”

Marketer

By

Title